

**ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE
DIVISION IV**

CA06-459

February 14, 2007

MICHAEL L. FOWLER
APPELLANT

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NO. F411639]

V.

MCCLINTON ANCHOR/ASHLAND,
INC., ET AL.
APPELLEES

AFFIRMED

The appellant was employed in appellee's service department. His duties included maintaining equipment and driving a fuel truck. He filed a claim for benefits asserting that he sustained a compensable knee injury while exiting the fuel truck in the course of his employment with appellee. At the hearing, there was evidence that appellant did not immediately report his injury, sought treatment from Med-Quick rather than the company doctor, and initially told a co-worker that he had injured his knee at home the day before the asserted compensable injury. Appellant denied making any such statement. The issue was one of credibility, and the administrative law judge found that the evidence regarding the origin of his knee injury was not of sufficient force for appellant to sustain his burden of

showing that he sustained an injury arising out of and in the course of his employment. On appeal, appellant contends that the Commission erred in finding that he failed to prove that his knee injury was compensable. Appellant also argues that the administrative law judge erred in denying his motion for all ALJ's and Commissioners to recuse from cases in which attorney Rick Spencer represented claimants because affidavits from former administrative law judges showed that, because of political pressure, the Commissioners expected all ALJ's to "handle" Mr. Spencer by ruling against him, and terminated ALJ's who did not do so. We affirm.

We first address the question of the sufficiency of the evidence to support the Commission's finding that the claimant failed to prove that his injury was compensable. In reviewing decisions from the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings and affirm if they are supported by substantial evidence, *i.e.*, evidence that a reasonable person might accept as adequate to support a conclusion. *Carman v. Haworth, Inc.*, 74 Ark. App. 55, 45 S.W.3d 408 (2001). Where, as here, the Commission has denied a claim because of the claimant's failure to meet his burden of proof, the substantial evidence standard of review requires that we affirm if the Commission's opinion displays a substantial basis for the denial of relief. *Williams v. Arkansas Oak Flooring Co.*, 267 Ark. 810, 590 S.W.2d 328 (Ark. App. 1979). We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not

have reached the conclusions arrived at by the Commission. *Wal-Mart Stores, Inc. v. Sands*, 80 Ark. App. 51, 91 S.W.3d 93 (2002). Questions of weight and credibility are within the sole province of the Workers' Compensation Commission, which is not required to believe the testimony of the claimant or of any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Strickland v. Primex Technologies*, 82 Ark. App. 570, 120 S.W.3d 166 (2003). Once the Commission has made its decision on issues of credibility, the appellate court is bound by that decision. *Id.*

It was appellant's burden to establish that his injury was compensable, and to do so he was required to show, *inter alia*, that he sustained an accidental injury arising out of the employment. Ark. Code Ann. § 11-9-102(4)(A)(i) (Supp. 2005). "Arising out of the employment" refers to the origin or cause of the accident. *Gerber Products v. McDonald*, 15 Ark. App. 226, 691 S.W.2d 879 (1985). At the hearing, the evidence presented by the parties on this issue was contradictory. Appellant testified that he injured his knee at work; appellee adduced testimony to show that appellant was, in fact, injured at his home. The Commission found appellant to be less credible because he did not immediately report the asserted injury or seek treatment from the company doctor as he was required to do in the event of a work accident. We hold that this is a sufficient basis for deciding the credibility issue in favor of appellee and denying the relief requested by appellant. There may be substantial evidence to support the Commission's decision even though we might have

reached a different conclusion if we had sat as the trier of fact or heard the case de novo. *Lee v. Dr. Pepper Bottling Co.*, 74 Ark. App. 43, 47 S.W.3d 263 (2001). Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission, and we defer to the Commission's findings on what testimony it deems to be credible. *Patterson v. Arkansas Department of Health*, 343 Ark. 255, 33 S.W.3d 151 (2000). When there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts; in so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

The Commission's denial of appellant's motion for recusal must also be affirmed. Appellant concedes that we held in *Quinn v. Webb Wheel Products*, 59 Ark. App. 272, 957 S.W.2d 187 (1997), that the composition of the Commission did not violate due process and that there was nothing that would make the manner in which its members are selected unconstitutional. His entire argument for recusal thus turns on his assertion that "the affidavits of [former administrative law judges] Daniels and White clearly demonstrate [that] the existing laws do not . . . provide any protections for the administrative law judges deciding claims" because the affidavits show that the executive branch of government scrutinizes the decisions of those judges and pressures them to favor business interests over the needs of injured workers. However, those affidavits were never accepted into evidence

by the ALJ, and appellant never asserts in his brief that the exclusion of these exhibits was erroneous.

We held in *Quinn v. Webb Wheel Products, supra*, that the composition of the Commission is not intrinsically unfair. We also held that an adjudicator is presumed to be unbiased, and to overcome that presumption, a litigant must make a showing of a specific conflict of interest or some other reason for disqualification. In general, the test is whether the adjudicator's situation is one that might lead him not to hold the balance between the parties clear and true. In the absence of the affidavits on which he relies, appellant cannot make the requisite showing of a specific conflict of interest, and appellant has abandoned the admissibility question by failing to argue it on appeal. An argument not raised by the appellant in his brief cannot be considered by this court on appeal. *Mecco Seed Co. v. London*, 47 Ark. App. 121, 886 S.W.2d 882 (1994).

Affirmed.

GRIFFEN and VAUGHT, JJ., agree.